



Ohio Board of Professional Conduct

PREHEARING INSTRUCTIONS

These prehearing instructions are for the facilitation of disciplinary proceedings conducted pursuant to Gov.Bar R.V of the Supreme Court Rules for the Government of the Bar of Ohio. These instructions provide a general overview of proceedings before the Board. Counsel for each party should review and comply with these instructions unless otherwise directed by the panel chair or Board staff.¹

Rule V of the Supreme Court Rules for the Government of the Bar of Ohio, Disciplinary procedure, governs hearings before the Board. Counsel should be familiar with Gov.Bar R.V, Gov.Bar R.IV, Professional Conduct and the Rules of Professional Conduct. Parties should also review Appendix II of the Rules for Government of the Bar, Procedural Regulations of the Board of Professional Conduct of the Supreme Court of Ohio (Proc. Reg.). for more detail. Specific questions may be directed to the panel chair during prehearing telephone conferences or to Board Staff.

Time Guidelines for Pending Cases

- Time guidelines that guide the hearing panels and the Board in processing each disciplinary case are found in Proc. Reg. 8.

Filing and Service of Pleadings

- All case documents shall be filed electronically, unless permission is otherwise given by the Director. See, [Guidelines for Electronic Filing of Case Documents](#).
- Once a certified complaint is filed with the Board, all subsequent case documents must be filed with the Board. The name, address, phone number, email address, and attorney registration number of each attorney must be included on all pleadings. Each filing must contain a certificate indicating service on the opposing party.

¹ Board Staff consists of Elizabeth Smith, Director; Allan Asbury, Deputy Director and Senior Legal Counsel; and, Faith Long, Case Management Clerk.

Hearing Panel

- Once an answer is filed in a case, the Director assigns by lot three members of the Board to serve as the hearing panel. A hearing panel consists of at least two judge or attorney members and may include one nonlawyer, public member. A hearing panel may not include a Board member who resides in the appellate district from which the complaint arose or who served on the panel that reviewed the complaint for probable cause. (Gov.Bar R. V (12)(C).
- The hearing panel is chaired by a judge or lawyer member of the panel. The panel chair conducts all prehearing conferences and presides over the hearing.
- Within forty days of the appointment of a hearing panel, the panel chair will conduct a pre-hearing conference. At that time, discussion at the pre-hearing hearing conference will include a discovery timetable, witness and exhibit identification deadlines, and the potential for stipulations. (Proc.Reg. 8(A)).
- The panel chair also will set a hearing date in consultation with the parties and the other panel members. The panel chair has full responsibility to conduct the panel hearing and rules on procedural and evidentiary issues that may arise at the hearing.
- Communication between the parties and panel chair is essential to the timely and efficient resolution of cases. If a Consent to Discipline is contemplated, it must be filed no later than 90 days after the appointment of panel. Further the parties are encouraged to enter into stipulations of fact and law. Gov.Bar. R. V(16).

Subpoenas

- The issuance of subpoenas is governed by Proc.Reg. 6 and the Civil Rules of Procedure. See, [Instructions for Completing Electronic Subpoenas](#).

Stipulations and Exhibits

- Stipulations help expedite the hearing and allow the parties and hearing panel to focus on contested matters. Counsel should confer as necessary to reach agreement on stipulations and submit agreed stipulations in advance of the hearing and in accordance with any deadline contained in the prehearing order issued by the panel chair.
- Stipulation of rule violations must be supported by clear and convincing evidence of each alleged rule violation. The hearing panel is not bound to accept stipulated rule violations that are not supported by the evidence presented at the hearing.

- The parties are responsible for ensuring their exhibits are properly identified and entered into evidence. The panel chair's prehearing order will address the numbering and lettering of exhibits and establish a deadline for the submission of exhibits and exhibit lists.
- Joint exhibit lists and submission of joint exhibits are preferred and strongly encouraged whenever possible. Exhibits shall be electronically filed prior to the hearing date in accordance with the prehearing scheduling order. If exhibit notebooks are requested by one or more panel members they should be provided in sufficient copies for those requesting the notebooks at the same time as they are also electronically filed with the Board.

Panel Hearing

- The Board acts pursuant to authority granted to it by the Supreme Court Rules for the Government of the Bar of Ohio. Counsel are expected to conduct themselves and the proceeding with the usual standards of professionalism and courtroom etiquette and decorum. Counsel should stand when addressing the panel, questioning witnesses, and making or arguing objections. Panel members may be addressed as "Your Honor" or "Commissioner _____."
- Gov.Bar R. V(27)(A) provides that the Ohio Rules of Evidence and Rules of Civil Procedure shall be observed when practicable in the conduct of all hearings. Technical objections to the form of questions should be avoided if possible. The hearing panel chair will rule on any objections. The parties are responsible for requesting a separation of witnesses and for policing their own witnesses.
- If one member of the panel is unavailable to attend the hearing, the remaining two members constitute a quorum under Gov.Bar R. V(12)(C) and may conduct the hearing. The absent member will review the hearing transcript and participate in the panel's deliberations and preparation of the panel's report.
- Gov.Bar R. V directs the Board to receive evidence, preserve the record, and make findings and recommendations concerning complaints of misconduct. The panel members may question witnesses or may require either relator or respondent to produce witnesses or documents for their consideration. If the panel members inquires of a witness, the parties are given the opportunity to follow-up with additional questions.
- Near the conclusion of the hearing, the parties may be asked for their respective recommendations of the appropriate disciplinary sanction in the event the Board makes a finding of misconduct. If appropriate in light of the recommended sanction and facts of the case, the recommendation may include any conditions for a stayed

suspension, probation, or reinstatement to the practice if an actual suspension is recommended. Counsel should be prepared at hearing to make recommendations, supported by relevant case law, and should be familiar with the aggravating and mitigating factors listed in Gov. Bar R. V, (13) that affect the imposition of sanctions.

- The parties are responsible for ensuring that the Court Reporter has all exhibits admitted during the hearing, in order to ensure an accurate certified record for transmittal to the Clerk of Court of the Supreme Court, should a board recommendation for sanction be issued. All exhibits should be submitted by USB drive, one for Relator exhibits, one for Respondent exhibits, and a separate drive for any joint exhibits. This submission to the Court Reporter is in addition to the separate filing of exhibits made prior to the hearing for the panel's review in advance of the hearing.
- Following the hearing, the transcript and exhibits will be filed with the Board.

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